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Legality of Foreign Judgements

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The Indian legal system is widely praised in this present globalized world for the priority it places on the execution of foreign decrees and judgments. Due to the advancement in communication and technology, international legal materials are now commonly accessible. Bilateral or regional treaties, conventions, or other International Instruments may be used to recognize foreign Decisions. A foreign Decision is recognized when a court in one nation accepts a judicial decision made by courts in another "foreign" country and renders a judgment in virtually identical words without revisiting the original lawsuit's substance. If the judgment is fundamentally irreconcilable with the recognizing country's essential legal principles, recognition will be refused. The foreign Decision might be enforced in India either through execution processes or a lawsuit. The arbitral award is the decision of an arbitration tribunal on the merits that is comparable to a court judgment. Arbitration is particularly popular as a technique of resolving conflicts in the commercial sphere. One reason for this is that enforcing an arbitration award in a foreign jurisdiction in international trade is generally easier than enforcing a judicial judgment.

Keywords: *legality, foreign, judgement.*

INTRODUCTION

In India, higher court judgements from corresponding regions are judicially effective under the Code. – anti territory judgments, on the other hand, are only enforceable after starting a fresh civil suit in India, where the foreign judgement serves merely as evidence. The Indian courts'

respect for judgements from reciprocating territories is due to the existence of international agreements with those territories, which are founded on the customary international law principle of "pacta sunt servanda." Foreign decisions issued by the supreme court in reciprocating territories are enforceable in India in the same way that a local district court judgement is. As a result, an appeal process such rulings exists in the same way that a right to appeal an Indian court verdict does. Once affirmed, the judgement will comply with Section 51 of the Code,¹ which allows the court to order measures such as connection and sale of the estate, belonging without sale, or distribution of specifically decreed estate, as well as arrest (if necessary) in order to implement a verdict. The many obstacles that are confronted in the enforcement of arbitral awards, which are key features of arbitral awards, are also discussed in this paper.² The Arbitration and Conciliation Act³ governs the enforcement of arbitral awards. Even after many pieces of law have been passed in this area, enforcing foreign arbitral judgments remains a difficult task. As a result, this paper goes over a few of the obstacles that make administering foreign awards in India difficult. It also depicts the impact of public policy on foreign awards.

There are no states in India that have a separate legal framework for the recognition and enforcement of foreign decisions. The Code,⁴ as the central statute is applied uniformly across the country. The purpose of this paper is "to investigate the binding effect of foreign Decisions, that is the decisions issued by foreign courts, as well as the scope & object of section 13 of the Civil procedure code".⁵ The research also explains the circumstances in which foreign court rulings produce the principle of res judicata. A person may overtly or implicitly submit to the jurisdiction of a foreign court. As a result of the parties' consensual submission, foreign tribunals are considered internationally competent. The same is true since a party cannot change his mind after a judgement is rendered against him. A foreign judiciary's judgement is executed under the basis that once a foreign national court has decided on a claim, a legal

¹ Code of Civil Procedure 1908, s 51

² *Ibid*

³ Arbitration and Conciliation Act 1996

⁴ Code (n 1)

⁵ Code of Civil Procedure 1908, s 13

responsibility to fulfill that claim emerges in the nation where even the judgement is to be implemented.⁶ Although each state's norms of international law differ in many ways, certain rules are acknowledged as common to civilized jurisdictions by the community of nations. These common principles have been established as part of each state's judicial system to handle issues containing a foreign element and to execute foreign court decisions or as a result of global agreements. This acknowledgement is given not out of courtesy but because of the fundamental principles of justice, equity, and good faith. An understanding of analogous authority international law would be a helpful guide in developing our concepts of fairness and public policy. Within our borders, we are a sovereign country, yet "taking account of foreign law is not a derogation of sovereignty."

FOREIGN JUDGEMENT

A foreign court is one that is neither established nor maintained by the Indian government and is located outside of India. A foreign decision is one that is made by a court in another country. To put it another way, a foreign Decision is a judgement rendered by a foreign court in a case before it. "As a result, judgements issued by courts in the United Kingdom, Germany, France, the United States, and elsewhere are regarded as foreign Decisions. A decision issued before India's division by a court with legal boundaries over the region that has since become part of Pakistan will be regarded as a foreign decree. On the basis that the foreign Decision has indeed been tried and determined by a court of the competent jurisdiction, a legal responsibility to settle that obligation emerges. Although each state's fundamentals of private international law will differ, the committee of countries has recognized some rules as universally applicable to civilized countries. Such common rule is based on a careful examination of each state's judicial procedures for adjudicating issues containing a foreign element and enforcing foreign court judgments in specific matters, as required by international agreements. It is well established in private international law that since a foreign court has jurisdiction in the international term, the verdict rendered by that court would not be recognized/executed in India. One of most significant factors to evaluate is the court's jurisdictional competency, or geographical

⁶ *Ibid*

competence over the topic area and the defendant". The judiciary in this nation⁷ does not consider its competence/jurisdiction to be relevant in any way. In India, the legislation governing foreign Decisions is clear and lays out a straightforward mechanism for enforcing them.⁸ However, there are many disagreements on how reciprocating and quasi territories should be classified; this is owing to a lack of information from other bilateral treaty parties. India carries out a variety of judgments in order to ensure that everyone is treated fairly⁹. "A foreign decision must have been rendered on the merits of the case in order to be considered Res Judicata."¹⁰ After taking evidence and applying his intellect to the truth or falsity of the case, a judgement is said to have been made on points. The real criteria for determining whether a decision was rendered on the merits or not is whether it was rendered as a matter of routine, as a result of the defendant's actions, or as a result of a consideration of the truth or falsehood of the claimant's complaint.¹¹ The Code's¹² notion of res judicata prohibits a court of competent jurisdiction from considering a case based on a matter that was already decided in a suit between the same parties. As a result, if a foreign higher court's decree contradicts a prior conclusive judgement made by a competent court in a case involving the same parties, it cannot be enforced as a domestic decree in India.¹³ Initially, a judge will determine whether the award complied with the law's requirements. After an award has been determined to be enforceable, it can be used as a court order.¹⁴ At this point, the parties should be mindful of potential roadblocks, such as frivolous complaints from the other party and stipulations requiring the parties to present the award's original or authenticated copy, as well as the underlying agreement, to the court. The Indian Law does not specifically address concerns directly related to foreign awards because there is no distinction between international arbitral awards and

⁷ *Sankaran Govindan v Lakshmi Bharathi* (1975) 3 SCC 351

⁸ *Ibid*

⁹ 'Enforcement Of Foreign Judgments in India' (*Legalserviceindia.com*, 2021)

<<http://www.legalserviceindia.com/legal/article-1400-enforcement-of-foreign-judgments-in-india.html>> accessed 12 July 2021

¹⁰ Vidyarthi A, 'Enforcement of Foreign Judgments and Decrees in India - Ipleaders' (*iPleaders*, 2021)

<<https://blog.ipleaders.in/decrees-judgments-enforcement/>> accessed 26 July 2021

¹¹ Enforcement (n 9)

¹² Civil Procedure Code 1908

¹³ Vidyarthi (n 10)

¹⁴ *Ibid*

court rulings.¹⁵ Some changes, such as attempting to clarify traditional countries with reciprocal provisions that have yet to be specified in the official gazette, and legislation dealing directly with international arbitral awards, would help to organize the arbitral system and make India compatible with advanced legal regimes around the world. When it comes to enforcing a foreign award, there is still a lot of ambiguity.¹⁶ To establish confidence among the parties who have chosen arbitration as their preferred means of ADR, a much-needed explanation is essential. The only way to stop this mistrust from spreading is to introduce legislation that addresses these loopholes. The modifications, in combination with the Supreme Court of India's judgments, are a step in the right direction. It will assist in increasing the volume of arbitration in India.

THE GOAL OF FOREIGN JUDGMENTS RECOGNITION

A foreign court's decision is enforced on the assumption that once a foreign court of law has decided on a claim, the nation where the judgement is to be implemented assumes legal responsibility for fulfilling that claim. Although each country's norms of international law differ in many ways, several rules are acknowledged as universal to civilized countries by the community of nations.¹⁷ These basic principles have been implemented as part of each state's judicial system to deal with foreign-related issues and to enforce international court judgments or as a result of international accords. This acknowledgment is made not out of courtesy but out of adherence to the fundamental ideals of justice, fairness, and good faith. Understanding similar authority foreign legislation can aid in the development of our conceptions of fairness and policymaking. We are a sovereign state within our boundaries, yet following international law does not jeopardise our independence.¹⁸

¹⁵ Enforcement (n 9)

¹⁶ *Ibid*

¹⁷ Vidyarthi (n 10)

¹⁸ *Ibid*

FOREIGN DECISIONS STRONG INFLUENCE ON THE INDIAN JUDICIARY

It is important to note right away that judicial judgments might be considered powerful and convincing. Judiciary must obey an authoritative decision whether they agree with it or not. A convincing argument, on the other hand, is one that the judges are under no duty to adopt but will consider and give the weight it appears to deserve. Foreign verdicts are included in this category.¹⁹ Although there is no legal principle prohibiting a legislative Body from referring to foreign judgments, the law itself requires that this practice be done with precaution and that organizational parallels be thoroughly examined before applying a foreign Court's decision to a domestic subject.²⁰ It has been noted that legal systems in several countries, particularly those with a common-law pedigree, often borrow ideas and rules from one another. India is no exception to this pattern. There have been numerous occasions in which Indian courts have leaned on foreign court judgments.

RELIANCE'S POTENTIAL CAUSES

The fundamental reason for this dependence is the similarity of Indian law to that of other countries, "such as Britain, the United States of America, Canada, and others, whose legal decisions are frequently cited by Indian judiciary." This aspect exists as a result of the fact that most Indian laws were inherited from such countries, but India modified them slightly. Another aspect is that legal education is becoming increasingly internationalized. For example, "law top schools in European countries are rapidly attracting students from throughout the world, particularly for graduate and academic projects." The variety in the classrooms encourages the pull of ideas among students from various jurisdictions.²¹

Whenever learners who have received an overseas education enter the bar & judiciary of their home country, they carry the ideas they learned during their training with them.

¹⁹ Burhan Majid, 'Persuasive Role of Foreign Judgements: An Indian Context' (*Jklaws. in*, 2021) <https://www.jklaws.in/admin_panel/files/9201711035450.pdf> accessed 11 July 2021

²⁰ *Ibid*

²¹ J Jose & S Maniar, 'Enforcement Of Foreign Judgments and Decrees In India - Litigation, Mediation & Arbitration - India' (*Mondaq.com*, 2021) <<https://www.mondaq.com/india/trials-appeals-compensation/434962/enforcement-of-foreign-judgments-and-decrees-in-india>> accessed 11 July 2021

Another element that adds to the developing tendency of "judicial globalization," as I believe it is known, is accessibility to foreign legal documents, which has become much easier thanks to the advancement of information and communication technologies. Memberships to international law papers and legal reviews were highly expensive in India until several years ago and were sometimes beyond of reach of many practitioners and judges. The rise of the internet, on the other hand, has drastically altered the situation. Apart from the common law connection and legal and political thinking similarities, the use of English as the official text of Indian laws is another element that forces Indian courts to rely on international judgments from English-speaking nations. Courts that are free to rely on foreign judgments have a propensity to reference decisions that are beneficial to their viewpoints arbitrarily.²² In just such a scenario, judges would be allowed to cherry-pick cases to explain their judgments rather than conducting a thorough investigation into local precedent, and there'd be a risk of constitutional transplanting if dependence is not exercised with care and caution. As a result, I believe that in this era of globalization of professional rules, there is no rationale to stifle legal communication between judicial systems that hold common values and beliefs. However, while none of these judgments are obligatory on the Indian Supreme Court, they are persuasive authorities to whom courts may properly look for guidance.²³ Such should, nevertheless, be assessed in light of India's legislation and court procedures, as well as the practical aspects of lawsuits in India.

INDIA'S ENFORCEMENT OF FOREIGN JUDGMENTS

With globalization, India has established itself as a significant position in the global economy, making it imperative and appropriate to assess Indian law related to international judgments. International judgment enforcement is divided by law into recognition and enforcement of foreign Decisions, which necessitates a separation between the two.²⁴

To have a foreign Decision enforced in India, the decree-holder must file a suit in a proper court. Every decision by a foreign court is not binding in a country until it is reflected in a judgment

²² *Ibid*

²³ Vidyarthi (n 10)

²⁴ N Vaidya & R Singh, 'Legality of Foreign Judgments' (*Researchgate*, April 2010)

<https://www.researchgate.net/publication/228183979_Legality_of_Foreign_Judgments> accessed 12 July 2021

issued by a judge in that country, according to this procedure.²⁵ According to the law, a conclusive foreign Decision can be executed by filing a lawsuit. The court cannot get into the merits of the initial claim in such cases, and it must be conclusive as to any subject, thus adjudicating directly between both the parties.²⁶ Within three years after the date of the decision, a lawsuit for such a foreign Decision must be lodged.²⁷

ENFORCEABILITY REQUIREMENTS

Enforcement action cannot be brought if a foreign judgment is not regarded as "conclusive." The following are among some of the circumstances wherein a foreign decision is not considered 'Conclusive' - ²⁸

- The decision was not made by a court of competent jurisdiction.
- On the merits of the matter, no decision has been made.
- On the surface, the ruling appears to be based on an inaccurate understanding of international law or a refusal to recognize Indian law in circumstances when it is appropriate.
- Any judgment obtained via deception.
- A claim based on a violation of any legislation in force throughout India is upheld by a judge.

In all of its adjudicative components, the foreign decision should be entirely conclusive. Before attempting to impose a foreign Decision or ordinance, the parties intending to comply must ensure that the foreign Decision or decree does not fall under one of the exceptions indicated previously. If any of these exclusions are protected by a foreign judgement or order, it will not be regarded conclusive in India and will not be enforced. Injunctive rulings on charges, jurisdiction, separation decrees, pecuniary judgments, compulsory enforcement actions, and

²⁵ Vidyarthi (n 10)

²⁶ Vaidya (n 24)

²⁷ 'Validity of Foreign Judgments in India' (2021) <<https://www.indiafilings.com/learn/validity-foreign-judgments-india/>> accessed 09 July 2021

²⁸ *Ibid*

anti-suit enforcement actions have all been found to be effective by Indian courts. They went on to say that ex parte judgements are enforceable if all current legal processes are followed, the decision is based on the merits of the case, and the judgement claimant makes a case even if the accused is not present.

Default judgments, overview or special procedural orders, legislative decisions, verdicts authorising compensatory damages and fines, and quasi-judicial orders have all been deemed illegal in India.²⁹ A foreign Decision is not enforceable if it can be challenged in a foreign jurisdiction.³⁰ A foreign ruling must be decisive in order to be considered binding. If an appeal against the decision is underway at a foreign court of appeal, the judgment would not be regarded as final and enforceable in India.³¹

THE TIME LIMIT FOR ENFORCING A FOREIGN JUDGEMENT

Foreign Decisions from reciprocal countries are enforceable in India as decrees issued by Indian lower courts, according to the Code's provisions³². "The Limitation Act of 1963" establishes the time limits for executing a decree and, in the case of a foreign Decision, launching litigation. The following time frame is established for the execution of decrees under the terms of the statute of limitations - ³³

- Three years in the instance of a decree granting a compulsory injunction that begins on the decree's date or when a deadline for performance is set.
- Twelve years for the enforcement and implementation of any other decree, starting from the date when the decree becomes enforceable or where the decree directs any payment of money or delivery of property to be made at a specific date or in a repeated period, when default in making a payment or delivery in regard of which operation is pursued,

²⁹ Diva Rai, 'Enforcement of foreign judgments in India' (*iPleaders*, 6 May 2021) <https://blog.iplayers.in/enforcement-of-foreign-judgments-in-india/#Requirements_for_enforceability> accessed 10 July 2021

³⁰ Vidyarthi (n 10)

³¹ Rai (n 29)

³² Patrick Doris, 'Enforcement of Foreign Judgments' (*Chadha-co.com*, 2021) <<http://www.chadha-co.com/pdf/GTDT-Enforcement-of-Foreign%20Judgments-2016.pdf>> accessed 11 July 2021

³³ *Ibid*

presented that an application for the compliance or implementation of the ruling is filed.³⁴

ALTERNATIVE DISPUTE RESOLUTION (ADR)

If the foreign Decision was acquired unlawfully by keeping the arbitration agreement from the court that delivered the judgment, the enforcing court will sustain the defendant's objection and refuse to enforce the judgment in question.³⁵ Moreover, “the Arbitration and Conciliation Act of 1996³⁶ recognizes the right of a party to refer an issue to arbitration as a contractual obligation, and compels a judicial authority to refer a case that is the subject of an agreement to arbitrate to arbitration when either party raises an issue”. An objection based on a violation of the aforementioned legislation would also prevent the Indian courts from enforcing the verdict. Section 13 of the Code³⁷ similarly enumerates these concepts.

PROCEDURE FOR ENFORCING FOREIGN JUDGEMENT

An acceptable foreign decision can be carried out in India in two ways. The Code allows a superior court judgment from a reciprocating territory to be enforced in the same way as a domestic district court judgment is enforced. In order to enforce a decision made under Section 51 of the Code,³⁸ the court may impose measures such as attachment and sale of property, attachment without sale or surrender of property specifically decreed, as well as arrest, if necessary.³⁹ The Code, on the other hand, precludes the instant enforcement of decisions from non-reciprocating jurisdictions without the filing of a new civil suit in which the judgment is used solely as evidence.⁴⁰

³⁴ Doris (n 32)

³⁵ Vidyarthi (n 10)

³⁶ Arbitration and Conciliation Act 1996

³⁷ Code of Civil Procedure 1908, s 13

³⁸ Code of Civil Procedure 1908, s 51

³⁹ Global Legal Group, ‘The International Comparative Legal Guide to: Enforcement of Foreign Judgments 2019’ (Cov.com, 2021) <https://www.cov.com/-/media/files/corporate/publications/2019/01/england_and_wales_the_international_comparative_legal_guide.pdf> accessed 13 July 2021

⁴⁰ *Ibid*

The steps of an executing case in India started to carry out a decree under “Section 44A of the CPC”⁴¹ are as follows-

- **Applications for complying** - The decree-holder must file an appeal for the decree's enforcement with the competent court.
- The court would next send a notice to the individual against whom the execution is sought, requesting that he demonstrate cause for failing to carry out the order.
- When the person of whom the decree is now to be imposed fails to demonstrate and show cause why the ruling ought not to be imposed, the jury will accept and impose the worldwide declaration as if it were an Indian court judgement, with the decree-holder authorised to enforce the judgment against the accused's property.
- **The decree-holder** can ask the court to issue orders to the judgment debtor, requiring them to report any assets and obligations. When such assets are exposed, the court will comply with the seizure and sale of such properties.

NON-RECIPROCATING TERRITORIES JUDGMENTS

A judgment issued by a court in a non-reciprocating territory, on the other hand, is not subject to immediate adjudication. The registered proprietor must reopen the case in India by bringing a civil suit based on the foreign judgment, which will be used to prove the obligation owed to the petitioner. The judgment creditor might use the foreign decree as evidence in his or her case. Even in this case, the foreign decision must pass the requirements outlined in “Section 13 of the CPC.”⁴² in order to be considered reliable as evidence. Litigation like this must be brought within three years of the foreign decision. While India is not a signatory on the Implementation of the international Judgments in Civil and Local Laws, it has signed reciprocal agreements with several countries. For instance, cooperation and interdependence in the enforcement of foreign verdicts and rulings; however, such countries have not yet been designated as reciprocating territories. “Afghanistan, Azerbaijan, Bahrain, Bulgaria, France, Kazakhstan, Mongolia, Turkey, and Ukraine are among the countries involved.” “The implementation of

⁴¹ Code of Civil Procedure 1908, s 44A

⁴² Code of Civil Procedure 1908, s 13

judgments and decrees from courts in these jurisdictions follows the same approach as non-reciprocating territories awaiting notification as reciprocating territories."

"In the case of *Marine Geotechnics LLC v. Coastal Marine Construction and Engineering Ltd*⁴³ the Bombay High Court held that when a decree is obtained from a non-reciprocating territory, the decree-holder has the option of filing a suit in Indian courts based on the foreign decree, the original underlying cause of action, or even both"⁴⁴. The bearer of the decree cannot simply carry out a foreign decree. If, on the other hand, the decree is from a reciprocating territory, it can be immediately implemented by filing an execution application in accordance with Section and "Order XXI Rule 11 (2) of the CPC".⁴⁵ "A certified copy of the decree, as well as a certificate from the superior court detailing the degree to which the order has been met or adjusted, must be added to the application by the decree-holder submitting an execution application." "A foreign edict from a reciprocating or non-reciprocating territory, on the other hand, must pass the requirements of conclusiveness outlined in Section 13 of the CPC".

CONCLUSION

As a result, the following overview of the legal challenges associated with enforcing foreign Decisions in India underlines the need for Indian businesses not to dismiss summonses obtained from international courts. To summarise, foreign decisions are enforceable and thus generates res judicata between the parties. The judgments must not fall under the provisions of Section 13 of the Code of Civil Procedure, clauses (a) to (f). The legality of foreign decisions in India is crucial to the courts, particularly in terms of private international law.

⁴³ *Marine Geotechnics LLC v Coastal Marine Construction and Engineering Ltd* 2014 (2) Bom CR 769

⁴⁴ R Shetty & J Jose, 'Foreign Decree - Enforceability and Its Amplitude Over a Period Of Time' (*Argus-p.com*, 2021) <<https://www.argus-p.com/papers-publications/thought-paper/foreign-decree-enforceability-and-its-amplitude-over-a-period-of-time/>> accessed 10 July 2021

⁴⁵ Civil Procedure Code 1908, order XXI, rule 11(2)